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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/138,807

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7590

07/21/2005

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EXAMINER

SALCE, JASON P

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/138,807	<b>Applicant(s)</b> RAMANATHAN, RAMANATHAN	
	<b>Examiner</b> Jason P. Salce	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-18, 20-23 and 25-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-18, 20-23 and 25-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/11/2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 16-18, 20-23, 25-26, 28-34, 36-42 and 44 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kenner et al. (U.S. Patent No. 5,956,716).

Referring to claim 16, Kenner discloses setting a first marker in the video transmission (see a test packet at Column 27, Lines 58-59 and note that it is inherent that all packets contain different fields (markers), and therefore the system must know the difference between a test packet and a regular video data packet, and therefore is

Art Unit: 2614

marked as such). Therefore, Kenner sets a marker in the packet to identify the packet as a test packet.

Kenner also discloses the limitation of "call one method which provides a handle to said first marker", which is inherently provided by Kenner, by the use of the analogous ping program, presented in Kenner at Column 27, Lines 54-61. The examiner has provided many examples of how a ping program is executed. For example, the book "Computer Networks and Internets", Second Edition, on pages 11-13 describe the ping program. Note that in regards to the claim limitations, calling a method, corresponds to typing in the "ping" command along with the location the user wishes to ping (in the case of Kenner, a video server, which provides video transmissions), while providing a handle is the location of memory that stores the result of the ping command and the first marker is the data written in the test packet that is tracked.

Kenner also discloses tracking the transmission as soon as said handle is provided to said first marker (see Column 27, Lines 44-46 for a discussion of tracking the demand of video clips from remote clients, and Column 27, Lines 58-59 for performing this tracking by sending a test packet (which contains a marker as discussed above)).

Kenner also discloses that at any time after said handle is provided (by calling the ping program), call another method to obtain tracking information which is current as of the time said another method is called (also note that the ping program can be called/invoked multiple times from a command prompt and therefore, another method

Art Unit: 2614

can be called to obtain tracking information, and that the invocation of another method is current as of the time said another method is called (when the ping program is invoked, the results are current as of the time it was invoked)).

Claim 17 corresponds to claim 16, with the additional limitation of receiving web content transmission and accompanying television broadcasts from a content provider. Column 2, Lines 43-67 of Kenner teaches acquiring web content and also video on demand programs off the Internet. The content provider is disclosed as an ISP at Column 1, Lines 58-61). Therefore, it is inherent that web content as disclosed by Kenner can be accompanied by television broadcasts.

Claim 18 corresponds to claim 17, and additionally discloses receiving web content from a content provider (disclosed by Kenner at Column 1, Lines 58-65), combining the web broadcast content with the television programming (see rejection of claim 2) at a broadcast encoder (PIM 64 in Figure 4) and inserting the first marker at the broadcast encoder (see Column 27, Lines 44-46).

Claim 20 corresponds to claim 16, where Kenner discloses including instructions that cause a computer to call a method which obtains current transmission details using said handle (again note Column 27, Lines 54-61 for calling the ping program and receiving transmission details). The examiner notes that the ping program has instructions that call a method (program code) to obtain current transmission details (see arguments above). Further note that Kenner discloses transmitting a transmission to plurality of receivers (see local terminals 14 and 48 in Figure 1 and Column 7, Lines 16-21) to display on a display device (see Column 8, Lines 34-43).

Claim 21 corresponds to claim 20, where Kenner discloses the use of the ping program, which causes a computer to provide a continuous data stream, set said first marker and a second marker in said stream, and associate said second marker with a second handle (see Column 27, Lines 54-56 for determining the response time of SRUs 92, therefore since plural SRUs can be tested, multiple ping queries can be initiated, therefore providing a first and second marker in a continuous data stream). Note that the applicant's specification states, "Markers can be provided at any level or granularity of the data transmission. For example, a data transmission may include a number of files, and markers may be associated with each of those files as well as with the overall broadcast that may include a plurality of files", therefore, since Kenner discloses sending video clips (files) to multiple terminals 14 and 48 in Figure 1, multiple ping method calls can be used to access a first and second marker in a continuous data stream (video clips sent to multiple terminals).

Claim 22 corresponds to claim 21, where Kenner discloses instructions that cause a computer to call a method, which provides transmission details (see the rejection of claim 20) and terminates the handle (note that when a ping program has reported the results of the test packet being tracked, the program terminates).

Claim 23 corresponds to claim 21, where Kenner discloses instructions that cause a computer to allow said first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a data transmission can be obtained (see the rejection of claim 21, where multiple ping

commands can be initiated, therefore creating separate handles used to provide separate sets of transmission details for different SRUs (see Column 27, Lines 54-61)).

Claim 25 corresponds to claim 16, where Kenner discloses that this transmission (sending a test packet and calculating a response time (elapsed time) is reported to the PIM 64 (see Column 26, Lines 34-39 for a discussion of how the PIM 64 determines which SRU (local or remote) is used to obtain the desired video clip, and Column 27, Lines 50-57 for a teaching of determining the closest remote SRU 92 by the test packet technique discussed above). Also note that the ping program sends response times back to the person calling the ping method (see pages 11-13 of "Computer Networks and Internets", Second Edition).

Referring to claim 26, see the rejection of claim 16 and 20. Note that the limitation "video transmission" is broad and does not convey whether a video, audio or data packet is being marked. A video transmission could be any type of data distributed throughout a video network. Therefore, since Kenner discloses distributing various types of data (video, audio, test packets) throughout a video network (see Figures 1-4), the data is therefore a video transmission.

Kenner also discloses that the tracking is on-going from the time said handle to said first marker is received (also see Column 27, Lines 58-59 to teach that the test packet is used to calculate a round-trip elapsed time, therefore, the test packet is used to determine a response time to and from the destination being "pinged", and is therefore on-going from the time said handle to said first marker is received (data identifying the test packet) upon completion of the round trip of the test packet).

Referring to claim 28, see the rejection of claim 17.

Referring to claims 29-30, see the rejection of claim 18.

Referring to claim 31, see the rejection of claim 20. Also note that when the ping command receives the results of the ping, the results are current as of the time the ping method was invoked, therefore teaching that the transmission details are current as of the time said method is invoked.

Referring to claims 32-34, see the rejection of claims 21-23, respectively.

Referring to claim 36, see the rejection of claims 16 and 25-26.

Referring to claim 37, see the rejection of claim 31.

Referring to claims 38-40, see the rejection of claims 21-23, respectively.

Referring to claims 41-42, see the rejection of claim 18.

Referring to claim 44, see the rejection of claim 16 and note that a first marker is enabled when a handle to said first marker is obtained (when the ping method invoked (begin tracking transmission) a handle to said first marker is obtained (memory location to receive ping result is established)).

3. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al. (U.S. Patent No. 6,459,427) in view of Kapoor (U.S. Patent No. 5,751,969).

Referring to claim 12, Mao discloses an encoder that combines different transmissions (see Column 5, Lines 40-42 for a discussion of the MOREGATE™ server 80, which is capable of combining program synchronous web content onto an MPEG video stream) to distribute to a plurality of receivers (see Column 4, Lines 9-12 and



Art Unit: 2614

Lines 28-35). Mao also discloses re-assigning PID (packet ID) values (setting a marker) by the re-multiplexer 70 (see Column 5, Lines 18-24).

Mao fails to teach a counter for tracking the transmission from the time the first marker is enabled for tracking. Kapoor teaches both setting a first marker (Column 4, Lines 52-55) as well as teach the missing limitation of a counter for tracking a transmission from the time the first marker is enabled for tracking (Column 5, Lines 15-19 for tracking the first transmission after a first marker was set and Column 5, Lines 48-49 for incrementing a counter when a marker is detected in a packet).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the MOREGATE™ server 80, as taught by Mao, using the congestion controller 26, as taught by Kapoor, for the purpose of managing the network traffic through nodes (MOREGATE™ server 80 and set-top box 150) to avoid traffic congestion (Column 1, Lines 53-54).

Claim 13 corresponds to claim 12, with the additional limitation of a broadcast encoder coupled to a content provider. Mao discloses an HFC Headend 10 and an MPEG-2 remultiplexer 70 coupled to the HFC Headend 10 in Figure 1.

Claim 14 corresponds to claim 13, with the additional limitation of the broadcast encoder setting the first marker in the video transmission (see Column 5, Lines 18-24 for re-assigning a PID (first marker) in an MPEG stream).

Claim 15 corresponds to claim 13, with the additional limitation of the content provider setting a first marker in the video transmission (note that the HFC Headend 10 is equated to the content provider, which contains the remultiplexer 70 (broadcast

Art Unit: 2614

encoder) coupled to the HFC Headend 10, therefore the content provider also sets the first marker).

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Kapoor (U.S. Patent No. 5,751,969).

Referring to claim 27, Kenner discloses all of the limitations of claim 26, but fails to disclose providing an on-going count of bits transmitted. Kapoor teaches setting a first marker in a video transmission (see Column 4, Lines 52-55). Kapoor also discloses tracking the transmission after the first marker (Column 5, Lines 15-19). Kapoor also discloses reporting the transmission (Column 6, Lines 53-59). Kapoor continues to disclose the limitation that is unsupported by Kenner of providing an on-going count of bits (see counting the marker set in a data packet at Column 5, Lines 48-49).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the PIM 64 used to acquire a video clip from a number of different remote SRUs, as taught by Kenner, using the congestion controller, as taught by Kapoor, for the purpose of managing the network traffic through nodes (PIMs and SRUs) to avoid traffic congestion (Column 1, Lines 53-54).

5. Claims 35 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Hullinger et al. (U.S. Patent No. 6,295,092).

Referring to claim 35, Kenner teaches all of the limitations in claim 11, but fails to teach a login server for allowing a third party to access transmission reporting. Kenner fails to teach a login server, reporting a transmission to said login server and allowing a third party to access said login server to receive transmission reporting. Hullinger discloses such a server in a system that provides a report of transmissions made by the system (see Figure 1 for a user interface machine 24 for reviewing transmission data processed by other components in the system (Figure 1), also note Column 11, Lines 6-45 for the details of such charts and graphs made available to the user). Also note that that the user interface machine contains a Windows operating system, which inherently allows a user (Administrator, the computer owner, or any third party) to log in and out of the machine. The examiner has provided a section of the Microsoft Windows Operating System book (see pages 16-17 and 77-81 in Chapter 2 for providing this feature, as well as tracking network activity for future reporting to a user).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the transmission tracking system, as taught by Kenner, using the log-in server, as taught by Hullinger, for the purpose of enabling a cable broadcast system to monitor network activity at off-peak hours (which is used to determine the most effective programming to broadcast at that hour).

Referring to claim 43, see the rejection of claim 35.

### ***Conclusion***

Art Unit: 2614

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason P Salce  
Patent Examiner  
Art Unit 2614

July 18, 2005

A handwritten signature in black ink, appearing to read "Jason Salce", is written over the typed name and title.